DOCUMENT RESUME

ED 224 076 CS 504 060

AUTHOR Crouse, Janice Shaw; Thorpe, Judie Mosier
TITLE The Extra-Curricular Perspective: The Moot Court.
PUB DATE Nov 82
NOTE 33p.; Paper presented at the Annual Meeting of the Speech Communication Association (68th, Louisville, KY, November 4-7, 1982).
PUB TYPE Guides - Classroom Use - Guides (For Teachers) (052) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Communication Skills; Debate; *Ethical Instruction; *Ethics; Higher Education; *Legal Education; Moral Values; *Persuasive Discourse; Relevance (Education); Speech Instruction
IDENTIFIERS Ball State University IN; *Moot Court

ABSTRACT

At Ball State (Indiana) University, the moot court format's replication of real-world advocacy has been found far more conducive to teaching ethics and values than debate because it provides internal monitoring devices and instantaneous feedback. Of course, the main purpose of the moot court is to polish communication skills. Still, even with this emphasis on communications ethics, ethical and moral questions emerge primarily in three areas: (1) the role of evidence, (2) the use of persuasion and argument, and (3) responsibilities to the client and to society. Questions of evidence are particularly important during the first two sections of moot court, the opening statement and the examination of witnesses. During these phases, accuracy, completeness, relevance, openness, understanding, and reason are stressed. Given the importance of closing arguments and the difficulty of formulating objective rules, students are asked to judge persuasive arguments by effects, truthfulness, type of appeal, intent, and means. Lastly, the realism of the moot court format forcefully impresses upon the students their responsibilities to the client and to society. Although it is unclear whether ethics can be taught, the moot court format does pose many ethical questions that student advocates must grapple with and answer. (Appendixes contain copies of moot court scenarios and agendas.) (JL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED224076

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

COMMUNICATION AND ETHICS: THE CONTRIBUTIONS OF LEGAL ADVOCACY ACTIVITIES IN ACADEME

THE EXTRA-CURRICULAR PERSPECTIVE: THE MOOT COURT

BY

JANICE SHAW CROUSE
AND
JUDIE MOSIER THORPE

THE SPEECH COMMUNICATION ASSOCIATION
SIXTY-EIGHTH ANNUAL MEETING
LOUISVILLE, KENTUCKY
NOVEMBER 7, 1982

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Jancie Shaw Crouse
Judie Mosier Thorpe

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

CS504060

INTRODUCTION

In the post-Watergate years, a renewed concern for ethics has been widespread.[1] Rather than being limited to theologians and philosophers, ethics has been frequently the topic for workshops, conferences and scholarly journals for professional groups such as doctors, lawyers and teachers.[2] Certainly, the theme of this sixty-eighth annual convention of the Speech Communication Association is a prime example of the interest and importance of ethics and values and their interplay and interaction with communication.[3] Nevertheless, there is not a general consensus as to what constitutes ethical standards in the extra-curricular activities related to the field of speech communication.[4]

For a number of years, public address and forensics activities have been subjected to questions of academic accountability, suspicion and even censure. A review of the literature uncovers some of the reasons for this distrust. In 1961 Gary L. Peterson studied ethical practices in college debating and discovered that many of the specific items which were regarded by some writers as unethical practices were listed by others as constituting the conventions of debate.[5] He further found that although every author of a debate text

or journal article advised debaters to follow a code of fair play, very few of these authors included items which might compose such a code.[6] Carl Larson's 1964 study of "Ethics in College Debating" revealed a prevalence of unethical practices among intercollegiate debaters.[7] Klopf and McCroskey's 1964 article on "Ethical Practices in Debate" based upon 244 questionnaire responses from college debate coaches echoed the fact that considerable disagreement existed among them as to what is ethical or unethical.[8] Finally, Benson's 1971 analysis of the "Use of Evidence in Intercollegiate Debate" discovered that less than fifty per cent of the evidence used in the eighteen debates studied provided enough information to enable the hearers to locate and verify the evidence, and actual inaccuracies existed in one out of five instances of evidence use.[9] Obviously, these legitimate ethical concerns, discrepancies in ethical practices including use of evidence, have not gone unnoticed; there has been an increased awareness and return to professorial responsibility for helping students to make ethical, thoughtful choices.[10]

RATIONALE

In a recent issue of the Journal of Higher Education devoted entirely to the subject of "Ethics and the Academic Profession," it was suggested that although there are a variety of methods advocated for teaching ethics and moral

values, there is agreement that the academic profession is to confront students with their moral and ethical obligations as educated persons.[11] Further substantiation is advanced by the Hastings Study which "suggests that 'helping students foster, support and implement an examination of the moral life' is an ineluctable part of an institution's moral purpose."[12]

Within the academic environment, the speech communication profession is in an ideal position to integrate these ethical teachings into our curriculum because arguments, by their very nature, entail ethical obligations. Therefore, we begin with the premise that wherever speech exists there is a moral obligation present. Nilsen supports this notion by suggesting that "every act of speech is . . . a social act . . . having an ethical component."[13] Johannesen argues that "Potential ethical issues are inherent in any instance of communication."[14] Even Aristotle argued that moral values were best taught through experience.[15] Grouping these concepts, we find that through extra-curricular speech actitivies, students can experience ethical decision-making.

Although Ball State continues to sponsor debate as an extra-curricular activity that provides an excellent laboratory for advocacy training and introduces students to ethical dilemmas, it must be noted that the previously cited research identifies inherent weaknesses in debate as a forum for ethical training. For this reason, we have found the prospect of using the moot court with its replication of real-world advocacy, far

more conducive to teaching ethics and values than debate. The moot court format has several features which make it particularly adaptable to teaching ethical behavior.[16]

First, our moot court agenda, which is the same format that is used in many courtrooms in this country, allows an opportunity for immediate monitoring of advocates through the use of standard objections, cross-examination and re-direct questions. Although some debate tournaments use the cross-examination format, the judge in usual practice does not interupt the procedures and simply registers his final decision at the end of the round with the ballot. In the moot court, this process can provide immediate feedback permitting the judge to sustain or overrule testimony and evidence during the course of the trial.

Second, our moot court has several unique features. For example, the facts of the case and much of the evidence used by the student advocates is available to the jury and the audience in the printed program given out at the moot court. (See Appendix I and II for sample scenarios.) The availability of such information means that a distortion can be noted immediately. In debate, as Benson suggested, it is possible for some time lag to take place before inaccuracies are noted, if, indeed, they are ever detected.[17]

Third, in our Ball State format, the trial case is designed by the students in consultation with the advisors and the lawyers. Every effort is made to balance the case so that

there is equal probability of the defense or the prosecution winning the case.[18] In actual practice, we indicate that the vote rendered following the moot court will determine the guilt or innocence of the hypothetical defendant eliminating the a priori approach used by many moot courts. In effect, this places the burden of proof upon the persuasive arguments used by the student advocates.

Fourth, the Ball State format uses practicing attorneys along with debate coaches as advisors for the moot court. Not only does one of these lawyer-advisors serve as judge during the trial, but they each critique the event following completion of the trial and announcement of the verdict.[19] In summary, the moot court provides internal monitoring devices and provides for instantaneous feedback. In some measure, we have discovered that this process circumvents some of the ethical problems existing in intercollegiate debate.

At this point, however, it is necessary to reemphasize that we do not conduct moot court to teach the law or ethics, even though our experience has shown that the ethical and moral values which are communicated are inescapable. We conduct moot court in order to polish the communication skills that the pre-law student debater will need in law school, where little attention may be given to developing communication skills.[20] Thus, while our moot court format is real-life, our purpose for conducting an undergraduate moot court is significantly different from the law school appellate court or the moot

court competition. In short, we confront the ethical and value issues inherent in persuasive arguments and evidence. However, we are aware and our students are aware, that some matters must be seen from the perspective of legal ethics. Therefore, the practicing attorneys who serve as lawyer-advisors provide expertise in the questions of what is legal, while we limit our involvement to questions of communication ethics.[21]

Our definition of ethics is an attempt to provide for the two dimensions of legal and communicative considerations. We have found that Kelly's book, Legal Ethics and Legal Education, presents a definition which fits our communication needs and the situations which we encounter in the moot court activity.

> Legal ethics is not a system of laws, or rules or set of priorities applicable to the dilemmas and value conflicts faced by lawyers; it is rather a search for practical judgment or wisdom which attempts to achieve some coherence among conflicting values and principles and concerns, together with awareness of the particular circumstances and a sense of the applicable range of shared experience, beliefs, relations, and expectations. Legal ethics also takes into account moral sentiment--those attitudes, reactions, and feelings which not only affect our actions, but the way lawyers evaluate, justify, and explain conduct and relate to people.[22]

The questions with ethical or moral overtones or implications that we deal with in the moot court are found primarily in the following three areas: 1) the role of evidence, 2) the use of persuasion and argument, and 3) responsibilities to the client and to society. Our purpose in this paper is to explore the undergraduate moot court

experience and the ethical and moral principles relevant to the event.

ETHICS AND EVIDENCE IN THE MOOT COURT

Since the Ball State format uses the agenda of a real courtroom trial (See Appendix III and IV), the role of evidence and its ethical considerations is particularly important in the first two sections of the moot court, namely, the opening statement and the examination of witnesses.

Richard D. Rieke and Malcolm O. Sillars address the ethical considerations of the opening statement in Argumentation and the Decision-Making Process. They describe the opening statement as the description of a series of events in chronological order that will become the object of contention in the trial.[23] They point out that although the jury is instructed to listen to the opening statement as merely alerting them to what the case is about and what to look for when evidence is actually present, research conducted at the University of Chicago suggests that the jury may respond to the opening statement as if it were evidence.[24]

Furthermore, although lawyers are under ethical requirements in the opening statement not to argue the case, the chronological narrative may "channelize" the thinking of some jurors by having them selectively view some evidence more positively than other evidence.[25] Although Rieke and Sillars

suggest that the opening statement must be looked on as an argumentative element in the trial, we have carefully monitored this section to have it conform to our format. Most of our lawyer-advisors have defined the opening statement portion of the trial as the road map for the jury and have put little emphasis on its value.

From our perspective as communication educators, the opening statement is an extemporaneous informative speech. As a "canned speech", the spot is usually reserved for a newcomer to moot court. Since the facts of the scenario and the elements of the case are available to the audience and the jury, any attempt to embellish or diminish the information is readily apparent. Thus, although the opening statement is strategically placed for persuasion, in the moot court situation, it is treated as an informative speech with a chronological pattern of organization in which the lawyers inform the judge or jury of the facts that they intend to prove when the evidence is presented. Basically, the evidence of the trial is presented through the testimony of witnesses under the direct examination of the counsel who called them to the stand and modified by the cross-examination of the opposing counsel.[26]

It is the presentation of evidence which presents the ethical challenges. Since the lawyer must present evidence through dialogue with a witness, some ethical guidelines are necessary. We have followed the ethical guidelines

advanced by J. Vernon Jensen in Argumentation: Reasoning in Communication.[27] Six of Jensen's eight criteria are particularly appropriate for moot court evidence. Briefly, the student-lawyer should have a firm commitment to 1) accuracy, 2) completeness, 3) relevance, 4) openness, 5) understanding, and 6) reason.[28]

1) Accuracy. To exemplify this, the moot court lawyers should frame questions in such a way that the witness can answer accurately or in accordance with the printed scenario. If the truth is not elicited, obviously the opposing counsel has an opportunity to monitor this with an objection.

2) Completeness. Certainly, completeness is very important in the court of law since the lack of facts or information could provide the jury a warped view or cause a mistrial. Due to the time constraints of our moot court, the questions should be edited to get the fullest meaning in the most efficient use of time. From the standpoint of communication skills, this condensing provides a challenging assignment for the student-lawyers. An example of this came out in our second moot court. A young man accused of the crime, was able to clearly develop his testimony concerning his activities on the evening of the crime within the time frame we requested. Thus, he was able to give complete and thorough details by careful editing during several practice sessions.

3) Relevance. Along with completeness comes relevance. If

the area in question is not relevant, it wastes time as well as distracts, deceives or misleads the audience.[29] If the presentation of evidence dwells on matters not pertinent to the elements of the crime, the opposing counsel may again register an objection. From a communication standpoint, this encourages careful listening. Following our first moot court, one student attorney who methodically and laboriously asked detailed question after question with no apparent purpose in mind was critiqued by the three lawyer-advisors in the same way. Their suggestions were two-fold: first, they advised the students to not ask any question that they didn't already know the answer to and second, to not waste the court's time by asking questions that had no direct bearing on the case. They further suggested that the opposing counsel should have used the objection more frequently to get the case back on track.

4) Openness. Besides relevance to the case, openness is highly important in the moot court. As Jensen suggests that a basic cornerstone in democracy is the people's right to know all the necessary information needed to make intelligent decisions. Thus, any specific audience is entitled to a balanced and objective presentation unless it is clear that it is the intention and task of the speaker to present only one side of the issue.[30] Since the judge and jury hears both sides of an issue, openness is a dual responsibility. Therefore, both advocates need to provide full information and

to defend their clients to the best of their abilities. This question brought up an interesting ethical consideration for our student-lawyers in the first moot court we presented. In order to balance the case, we decided that our accused burglar had a previous record in burglary. It was this fact that lead to his arrest, yet the defense attorneys could protect his rights by keeping this evidence from being admitted and by keeping him off the stand. Once he took the stand in his behalf, the prosecution could open up questions about where he spent his time and thus uncover his record. The defense, in deciding to keep him off the stand made the ethical decision that every man has a right to a fair, unbiased trial, even an individual with a prior record. As advisors, we allowed the defense to make this decision and the results were interesting. The jury, who did not know of his prior record, found the young man guilty while the general audience who were told of his previous conviction found him innocent. Indeed, this issue is one that invites future research in a replication of the same scenario.

5) Understanding. Openness in moot court means that both sides fully develop their cases, but understandability is equally important. As Jensen argues, clarity of expression should become an ethical concern.[31] For this reason, student-lawyers are expected to take the scenario and spend a great deal of time making the elements clear and the facts flow

logically. We run several practices throughout the training with the objective of simply gaining clarity and smooth transition of questions and facts. We also encourage clarity through several nonverbal communication techniques. We encourage lawyers to position themselves in such a way that the jury and witnesses can clearly see them. One student-lawyer, much influenced by visits to a local courtroom, spent an entire examination period at his desk with his back to the jury. Needless to say, the jury missed many of his questions and he missed the feedback from the jury. During the follow-up critiquing session, one of the advisors asked him why he remained seated during the examination. The student's response was that he was impressed with the relaxed manner of a local attorney who asked questions while seated. The lawyer who was acquainted with the local attorney explained that his colleague had a disability which necessitated his being seated, but that he had made great effort to compensate by projecting his voice and positioning himself so he could always see the jury as well as the witness. Although this example more clearly explains our communication skill building, it also addresses the ethical consideration that when evidence or questions are not heard, the jury cannot make the best decision. Of course, in a real trial, the court record would be availabe for reference, but simply emphasizing clear communication to student advocates logically promises to save time in jury rooms of the future.

6) Reason. Ethical communication requires adherence not only to accuracy, completeness, relevance, openness and understandability, but also to reason.[32] According to Jensen, reason as an ethical guideline in communication emphasizes that logos (appeal to logic) should have precedence over pathos (appeal to emotions).[33] In other words, the deliberate use of non-rational motive appeals designed to short-circuit the thinking process of the listeners is inherently unethical because such appeals violate our democratic ethic, which demands freedom of choice.[34] However, as Jensen points out, most writers would agree, however, that to be ethical a speaker need not eliminate all emotional appeals.[35] In the moot court, since the presentation of evidence carries with it an implicit requirement to not argue, the event monitors itself with the use of objections of argumentative or hearsay evidence. In some measure, this centers the evidence to more factual or logical responses. Yet, emotion is an ethical concern for many lawyers due to the highly painful nature of the cases they must handle. To support this, our second moot court scenario was a hypothetical rape case. In advising the student-advocates, one of the lawyer-advisors who was a prosecuting attorney told about a case that he had recently had. It was a rape case in which the plaintiff was a twelve-year-old child. To make the situation less emotional, the lawyer related his agony at having to ask some pointed, direct, yet necessary questions of the child to establish the

elements of the crime. Although our advisor did not tell our students how to handle the questioning, he did share that his solution was to ask the questions of the child seated on a chair positioned between the jury and witness and to use a slow, carefully prepared and spaced series of questions that were delivered in a more gentle tone of voice than he normally used in the courtroom.

In summary, Jensen's ethical guidelines for communication serve as criteria that can be applied to the use of evidence in a moot court and prepare the groundwork for dealing with the ethical considerations of argumentation in the moot court.

ETHICS, PERSUASION AND ARGUMENT

From a communication point of view, the closing argument is the climax of the trial because that is where the student-advocate is able to utilize his persuasive skills with greatest impact. Rieke and Sillars quote Bill Colson as saying that the "final argument is the most important single feature of any lawsuit. . . that a case is won or lost in final argument."[36] Whether cases are actually won or lost in the final argument is debatable, but clearly the final argument provides the opportunity for utilization of persuasive skills that no other area of the moot court provides. Thus, the final argument presents the student lawyer with challenging ethical or value-oriented questions. While we deal with each question

as it arises, and we do not systematically teach ethics, we do have a "code" or guidelines which provide a standard. We feel that it is necessary for students to have the necessary tools with which to judge for themselves what is "right" or "wrong" about the arguments they intend to use in their final argument.

Sproule presents an argument for ethical codes which is consistent with our viewpoint:

> I think that there is a tendency in our modern age to be too quick in rejecting objective codes. Such codes do have weaknesses . . . Yet objective guidelines are a help: They make us sensitive to the opinions of others, and they facilitate judgment by giving us a formula that, despite its imperfections, may have substantial validity.[37]

Obviously the question of what is "right" behavior could be interpreted in different ways by different people. We ask students to judge their persuasive arguments by the following criteria.

1) What are the effects or consequences of an argument?[38] Such a question forces the student to make valuative judgments about the relative merits of ends versus means, the ultimate impact of his words on the people involved, the results on the situation in which he is involved and the ultimate outcome or effect of his words. The student is confronted with a sense of responsibility for his communication by becoming aware that there are consequences which must be taken into consideration.

2) Is this statement true?[39] There is tremendous temptation in our competitive culture to win at any cost, and

since in moot court we are dealing with fabricated cases, there is a strong temptation for the students to reconstruct the facts of the case to suit a particular argument mid-trial. We were confronted with this situation in our moot court which dealt with the rape case. In balancing the case, the lawyer-advisor suggested the rape victim be almost blind to avoid absolute identification of the defendent. However, to make the scenario work more logically, we had the victim who needed her glasses to be able to see, have them broken when she was grabbed from behind. Yet, when she was on the stand, the prosecuting attorney had managed to ask her to change her story so that she could see items that were close, but needed her glasses for distance. This alteration caused the defendant to be found guilty but could have been prevented by an alert defense attorney who could have approached the bench about possible perjury. Unfortunately, this did not happen. The prosecution won, and we think the defense learned an important lesson. This example illustrates why we think that it is important to teach a respect for truth as a basic ingredient of communication. We would agree with Flynn that "untruths undermine the very basis of communication and are therefore inherently unethical."[40]

3) To what values does this argument appeal?[41] Student debaters who are assuming the role of a lawyer in moot court playing to an audience of peers, and pleading to a jury of peers must develop heightened moral sensitivity. Arguments

which appeal to our basic feelings, such as anger, hate, or prejudice, can make pretty exciting courtroom drama. Emotional appeals are easier to construct than appeals based on the "good" values of fairness and equality.

4) What is my intent in presenting this argument or persuasive appeal?[42] By encouraging students to consider intent of arguments, we see them face up to the implications of arguments which are hastily constructed and ill-advised. By questioning their own intent and purposes, students become aware of how their arguments will be perceived by listeners who will be questioning their motivation much more closely perhaps than the student tends to think they will.

5) What means am I using to prove my points?[43] Determining the means to utilize in persuading a jury in favor of a particular client is the area we find most easily abused. Obviously factual evidence is the foundation of all the arguments, but to what extent is emotional evidence allowed? In Moot Court #3 at Ball State the students designed a case where a mother was injured after being hit by a car driven by a young man. The civil trial had to determine who was at fault and the amount of the settlement, if any. The students balanced the case so that the young man was probably not at fault, but that had to be proved. In this case the student-lawyer for the defense faced the dilemma of whether to rely solely on doctor's records to prove the case or to bring in the mother's young children and seat them conspicuously near the

jury. Although the presence of the children obviously would not be a factor in determining whose fault the accident was, their presence might have an emotional impact on the jury's decision.

Although we would not tell a student-attorney what was "right" or "wrong" strategy in the above illustration, we think that the attorneys should confront the question of the means which are used to prove points.

RESPONSIBILITIES TO THE CLIENT AND TO SOCIETY

One of the ethical questions that faces lawyers is that they are often called upon to defend a client that they know is guilty; yet, it is their obligation to provide the best possible defense for the client just as it is for a doctor to do everything to save the life of a patient. For the student in a moot court, particularly in the Ball State format, this situation may be less traumatic since the client is hypothetical, and the crime is manufactured. Since there is an equal chance of guilt and innocence, we arbitrarily take the stance that the way the jury votes following the moot court is the final decision on guilt. However, after working with the case for six weeks, the characters take on a real quality to the student-lawyers and to the actors that portray them. If student advocates lose the case and their client is found guilty, they face an early taste of what they will experience in the future with real clients. There is the very

real possibility that the successful lawyer, if effective as a communicator, may free a criminal or imprison an innocent person. The moot court, therefore, provides training in ethical decision-making, particularly in the area of responsibility to the client and society. In this dimension alone, students are contronted with the real-life dilemmas which exist in an actual courtroom trial.

CONCLUSION

Although our work with the undergraduate moot court is in its beginning stages, it provides a frameword to examine ethical issues that have gained renewed prominence in society as well as academe. We have advanced the argument that moot court is more conducive to dealing with ethical concerns than academic debate because of the student's involvement in creating the case, as well as the internal monitoring features, and immediate feedback. To provide a theoretical basis for dealing with ethical questions, we advance Jensen's criteria for evidence as well as Sproule's guidelines for persuasive arguments. Our goal is to provide a frameword for isolating and examining the ethical issues confronting the student advocate and to help the students, "both inside and outside the classroom, formulate reasoned principles for themselves,"[44] rather than foist our morals and values onto students.

As communication educators, we want the student advocates

to ask questions regarding the use of evidence, arguments and the relationship of the lawyer to his client. As Jaggers suggests, "to accept one's philosophy on the authority of another is the ultimate form of alientation."45 We are committed to the philosophy that students who decide for themselves the issues raised by the questions we pose are developing their own moral values as well as polishing their analytical skills and reasoning abilities.

At this juncture, we are not sure that moot court teaches ethics, nor do we claim that it does, however, it does pose many ethical questions which student advocates must grapple with and answer. As Harvard president Derek Bok wrote in his essay, "Can Ethics be Taught?", it is plausible that students will become more aware of the reasons underlying moral principles and be more equipped to reason carefully in applying these principles to concrete cases.[45] We further agree with Bok that although the question, "Can Ethics be Taught?" is unanswerable, the experiment is surely worth trying.

END NOTES

1. Michael J. Kelly, Legal Ethics and Legal Education, (Hastings-on-the-Hudson, N. Y.: The Hastings Center, 1980). As reviewed by Ronald M. Pipkin in Journal of Higher Education, 53, No. 3, (May/June 1982), p. 362.

2. Larry R. Churchill, "Teach Teaching of Ethics and Moral Values in Teaching: Some Contemporary Confusion," Journal of Higher Education, 53, No. 3, (May/June, 1982), p. 296.

3. Program, Sixty-Eighth Annual Meeting, Speech Communication Association, p. 1.

4. The authors acknowledge the existence of the American Forensic Association Ethics Code. These standards are included in Carolyn Keefe's Introduction to Debate, Macmillan Publishing Co., 1982.

5. Gary L. Peterson, "Ethics in Inter-Collegiate Debating," (Unpublished M. A. Thesis, Ohio University, Athens, Ohio, 1961), p. 37.

6. Ibid.

7. Carl E. Larson, "Ethics in College Debating: A Study of Attitudes and Practices," The Communication Research Center of the Department of Speech and Drama, The University of Kansas, 1964.

8. Donald Klopf and James McCroskey, "Ethical Practices in Debate," Journal of the American Forensic Association, I (January, 1964), pp. 13-16.

9. James A. Benson, "The Use of Evidence in Intercollegiate Debate," Journal of the American Forensic Association, VII (Spring, 1971), pp. 260-270.

10. Journal of Higher Education, 53, No. 3, (May/June, 1982).

11. Ibid.

12. David D. Dill, "Introduction," Journal of Higher Education, 53, No. 3, (May/June, 1982), p. 244.

13. Thomas R. Nilsen, Ethics of Speech Communication, Second Edition, Indianapolis: Bobbs-Merrill Company, 1972, p. 12.

14. Richard L. Johannesen, Ethics in Human Communication, Wayne, New Jersey: Avery Publishing Group, Incorporated, 1978, pp. 11-12.

15. Aristotle, Nicomachean Ethics.

16. Judie Mosier Thorpe and Janice Shaw Crouse, "Advocacy in the Courtroom: Moot Court." Paper presented at Central States Speech Communication Association, Milwaukee, Wisconsin, April 17, 1982.

17. Benson, p. 269.

18. Thorpe and Crouse, p. 8.

19. Ibid., p. 5.

20. See Thorpe and Crouse, pp. 1-2 for a summary of statistical data about communication training in law schools. See also Ronald J. Matlon, "Bridging the Gap Between Communication Education and Legal Education," Communication Education, 31, (January, 1982), p. 45.

21. The authors acknowledge that what might be ethical in human communication behavior may not always be legal and vise versa. This perspective is addressed by Richard L. Johannesen in Ethics in Human Communication and supported by a quotation by Harold M. Williams which states, "What is legal and what is ethical are not synonymous and neither are what is legal and what is honest. We tend to resort to legality often as our guideline. This is in effect what happens often when we turn to the lawyers for confirmation that a course of action is an appropriate one." p. 18. For this reason, we use advisors with communication training as well as advisors with legal training.

22. Richard D. Rieke and Malcolm O. Sillars, Argumentation and the Decision-Making Process, (New York: John Wiley and Sons, Incorporated, 1975), pp. 242-243.

23. Ibid., p. 242.

24. Ibid., p. 243.

25. Thorpe and Crouse, p. 5.

26. Ibid., Appendix II.

27. J. Vernon Jenson, Argumentation: Reasoning in Communication, (New York: D. Van Nostrand, Company, 1981), p. 23.

28. Ibid., p. 23.

29. Ibid., pp. 30.

30. Ibid., p. 3o-31.

31. Ibid., pp. 32.

32. Ibid., p. 32-33.

33. Ibid., p. 33.

34. Ibid.

35. Ibid.

36. Rieke and Sillars, p. 248.

37. J. Michael Sproule, Argument: Language and Its Influence, (New York: McGraw-Hill Book Company, 1980), p. 287.

38. Ibid., p. 82.

39. Ibid., p. 83.

40. Flynn as quoted in Sproule, p. 83.

41. Sproule, p. 83.

42. Ibid.

43. Ibid., p. 84.

44. Elias Baumgarten, "Ethics in the Academic Profession: A Socratic View," Journal of Higher Education, pp. 282.

45. Alison Jaggers, as quoted in Baumgarten, p. 283.

46. Bok in Churchill, pp. 296-297.

BIBLIOGRAPHY

Barnlund, Dean C. "Toward a Meaning-Centered Philosophy of Communication." Journal of Communication, 12 (1962): 197-211.

Baumgarten, Elias. "Ethics in the Academic Profession: A Socratic View," Journal of Higher Education, 53, No. 3, (May/June 1982): 282-294.

Benson, James. "The Use of Evidence in Intercollegiate Debate," Journal of the American Forensic Association, VII: Spring, 1971): 260-270.

Bettinghaus, Erwin P. The Nature of Proof. Second Edition. Indianapolis: Bobbs-Merrill, 1972.

Board of Student Advisors, Harvard Law School. Introduction to Advocacy, Mineola, New York: The Foundation Press, Inc., 1976.

Brombeck, Winston R. and Howell, William S. Persuasion: A Means of Social Influence, Second Edition. Englewood Cliffs, New Jersey, Prentice-Hall, 1976.

Brockriede, Wayne. "Where is Argument?' Journal of the American Forensic Association, 9 (1975): 179-182.

Cheseboro, James. "A Construct for Assessing Ethics in Communication." Central States Speech Journal, XX (Summer, 1969): 104-114.

Churchill, Larry R. "The Teaching of Ethics and Moral Values in Teaching: Some Contemporary Confusions," Journal of Higher Education, 53, No. 3, (May/June, 1982):

Copi, Irving M. Symbolic Logic. Third Edition. London: Macmillan, 1967.

Corbett, Edward P. J. "The Rhetoric of the Open Hand and the Closed Fist," College Composition and Communication, 20 (1969): 288-296.

Crable, Richard E. Argumentation as Communication Reasoning With Receivers. Columbus, Ohio: Merrill, 1969.

Crossley, David J. and Wilson, Peter A. How to Argue: An Introduction to Logical Thinking. New York: Random House, 1979.

Dieterich, Daniel, Editor. Teaching About Doublespeak, Urbana, Illinois: National Council of Teachers of English, 1976.

Dill, David D. "Introduction," Journal of Higher Education, 53, No. 3, (May/June, 1982):

Eisenberg, Abne N. and Joseph A. Ilardo. Argument: A Guide to Formal and Informal Debate. Englewood Cliffs, New Jersey. Prentice-Hall, Inc., 1980.

Fagothy, Austin. Right and Reason: Ethics in Theory and Practice. St. Louis: Mosley, 1972.

Freezel, Jerry D. "A Qualified Certainty: Verbal Probability in Arguments." Speech Moncgraphs, 41 (1974): 348-356.

Fisher, Walter R. "Toward a Logic of Good Reasons," Quarterly Journal of Speech, 64 (1978): 376-384.

Flynn, Lawrence J. "The Aristotelian Basis for the Ethics of Speaking," Speech Teacher, 6(1957): 179-187.

Fogelin, Robert J. Understanding Arguments: An Introduction to Informal Logic. New York: Harcourt, Brace, Jovanovich, 1978.

Freeley, Austin J. Argumentation and Debate: Reasoned Decision-Making. Fifth Edition. Belmont, California. Wadsworth Publishing Company, 1981.

Fryar, Maridell and David A. Thomas. Basic Debate. Skokie, Illinois, National Textbook Company, 1980.

Johannesen, Richard L. Ethics in Human Communication. Wayne, New Jersey: Query Publishing Group, 1978.

Johannesen, Richard L. "Richard Weaver on Standards for Ethical Rhetoric." Central States Speech Journal, 29 (1978(: 127-137.

Journal of Higher Education, Columbus, Ohio: Ohio State University Press, 53, No. 3, May/June, 1982.

Keefe, Carolyn. Introduction to Debate, Macmillan Publishing Co., 1982.

Kelly, Michael J. Legal Ethics and Legal Education, Hastings-on-the-Hudson, New York: The Hastings Center, 1980.

Klopf, Donald and James McCroskey, "Ethical Practices in Debate," Journal of the American Forensic Association, Volume 1 (January, 1964): 13-16.

Larson, Carl E. "Ethics in College Debating: A Study of Attitudes and Practices," Kansas City: The Communication Research Center of the Department of Speech and Drama, The University of Kansas, 1964.

Marietta, Don E., Jr. "On Using People." Ethics. 82 (April, 1972): 232-238.

Matlon, Ronald. "Teaching Communication in the Legal Process," Communication Education, 30 (October, 1981): 399-409.

McCroskey, James C. "A Summary of Experimental Research on the Effects of Evidence in Persuasive Communication," Quarterly Journal of Speech, 55 (1969): 169-176.

McGuire, Michael. "The Ethics of Rhetoric: The Morality of Knowledge," Southern Speech Communication Journal, 45 (1980): 133-148.

Moran, Terence P. "Public Doublespeak: 1984 and Beyond," College English, 37 (October, 1975): 223-27.

Nilsen, Thomas R. Ethics of Speech Communication. Second Edition, Indianapolis: Bobbs-Merrill Company, 1972.

Perelman, Chaim. The Idea of Justice and the Problem of Argument. London: Routledge, 1963.

Peterson, Gary L. "Ethics in Intercollegiate Debating," Unpublished M. A. Thesis, Athens, Ohio: Ohio University, 1961.

Rieke, Richard D., and Malcolm O. Sillars. Argumentation and the Decision-Making Process. New York: Wiley, 1975.

Rives, Stanley G., "Ethical Argumentation," Journal of American Forensic Association, 1 (September, 1964): 79-85.

Robertschen, Jonas and Roger Williams. "Should Psychiatrists Get Out of the Courtroom?" Psychology Today, (December, 1977):85-86, 91-92, 138, 140.

Simons, Herbert W. Persuasion: Understanding, Practice and Analysis, Reading, Massachusetts: Addison-Wesley Publishing Company, 1976.

Thayer, Lee, Editor. Communication: Ethical and Moral Issues. New York: Gordon and Breach Science Publications, 1973.

Thorpe, Judie Mosier and Janice Shaw Crouse. "Advocacy in the Courtroom: Moot Court," Paper presented Central States Speech Association, Milwaukee, Wisconsin, April 17, 1982.

Toulmin, Stephen E. An Examination of the Places of Reasons in Ethics. Cambridge: University Press, 1970.

Wallace, Karl R. "An Ethical Basis of Communication," Speech Teacher, 4 (January, 1955): 1-9.

Weaver, Richard M. Ideas Have Consequences. Chicago: The University of Chicago Press, 1941.

Wieman, Henry N. "Speech in the Existential Situation," Quarterly Journal of Speech, 47 (1961): 150.

Ziegelmueller, George W. and Charles A. Dause. Argumentation: Inquiry and Advocacy. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1975.

APPENDIX I
Moot Court Number One Scenario
The Ball State Debate Team
Wednesday, January 28, 1981

To the Audience:

The moot court you will be seeing is based upon real courtroom procedure. In the interest of time, several aspects that are important to real justice are eliminated. They are as follows: questioning and seating the jury and entering evidence into the record. Our moot court concentrates on the opening statements of both prosecution and defense, the direct and cross-examination of witnesses as well as the closing remarks of the defense and prosecution.

The crime and the characters are hypothetical. When members of the moot court created them, they did so with the idea that the guilt or innocence is unknown. It will be up to those of you who are selected as a jury to determine if Dean Allen Walters is guilty of theft. Listen carefully to the evidence provided. You will be asked to vote on guilt or innocence and give your reason at the end of the trial.

Dean Allen Walters is on trial for theft. He worked as a carpet cleaner for Mid-West Carpet Cleaners in Middletown, a job that he had had for three years. One of his clients is the apartment complex owned by Gloria Vanderfeller. Gloria gives him a master key to enter and clean apartments. On December 24, Susan Lee, an occupant of one of the apartments came home around noon, and all was in order. At 5:30 that evening, she returned and discovered her front door ajar and her stereo and television were missing. Captain Agatha Anderson was called to the scene and conducted an investigation. Anderson discovered several factors existed. The sliding glass door in the rear of the apartment was unlocked, but closed. She dusted for fingerprints and discovered that prints of Dean Allen Walters along with those of Ms. Lee were throughout the apartment. Later that evening, an anonymous tip around 11:45 p.m. led Anderson and her partner to a fence operation on the outskirts of town. The warehouse was empty, but a door was ajar and Anderson and her partner entered to find many stolen items there. The stereo and television of Ms. Lee were among the items recovered. A dusting of the items discovered that the prints of Dean Allen Walters were located on the television. In addition to this evidence, a friend of Walters testified when he was brought into the police station for questioning that Walters had told him "he intended to make a killing." A warrant for Walters was issued and Anderson and her partner picked Walters up at his basement apartment on December 24 at 2:30 a.m. Walters claimed he was innocent; that he was not the thief. He claimed that he had spent the evening wrapping Christmas presents. It is the desire of the defense attorneys to not call Walters to the stand.

APPENDIX II
Moot Court Number Two Scenario
Ball State Debate Team
Thursday, November 5, 1981

THE FOLLOWING HYPOTHETICAL SITUATION WAS CREATED BY THE MEMBERS OF THE MOOT COURT PRESECUTION AND DEFENSE WITH THE ASSISTANCE OF MOOT COURT LAWYER-ADVISOR, ROBERT CLAMME. A DELIBERATE ATTEMPT WAS MADE TO BALANCE THE CASE IN SUCH A WAY THAT BOTH THE DEFENSE AND THE PROSECUTION SHARED EQUAL BURDENS IN TERMS OF PERSUADING THE JURY.

On September 13, 1981 Alice May was raped in graduate parking lot located at Armayrage Avenue and Magnum Street, north of Bailey University between 7:30 and 8:15 p.m. Miss May did not report the rape until 11:43 p.m. since her glasses were crushed in the attack and it took her several hours to find her way back to her apartment in Inherency Hall.

Police Officer Darrow, who was dispatched to Miss May's residence, a private apartment complex, around midnight, filed the following facts in an Offense Report: Alice May reported to Officer Darrow that she was grabbed from behind, her glasses flew off and were subsequently broken. She described her attacker as wearing shorts and a headband. She also reported that her rapist had a distinct accent, probably English. Alice May also indicated that her attacker had been scratched badly by the gravel in the parking lot when they struggled.

Following his arrival at Miss May's apartment, Officer Darrow took Miss May be squad car to University Hospital where she was examined by Dr. Emeritus Emory, who established through medical examination and tests that completed intercourse had taken place. At 2:50 a.m. on 9/14/81 the Offense Report was filed and the following day, Officer Darrow started his investigation.

Officer Darrow discovered that another resident of Inherency Hall, a track team member from New Zealand, Daniel Wayne, had been seen by the apartment manager, Dale Donovan at 10:30 p.m. with scraped and bleeding knees. Donovan filed a deposition establishing this fact. Investigation at the tennis court between Inherency Hall and the graduate parking lot established that several witnesses had seen Daniel Wayne run from the court area to the graduate parking lot around 7:20. One witness testified further that Wayne stopped at a drinking fountain and at that time, he did not have any unusual scratches or injuries.

A line-up was held on September 14, 1981, which included Wayne as well as the tennis players and two members of the holding tank at Central Station. Alice May identified Daniel Wayne as her attacker in terms of general description as well as voice identification. Wayne was not able to provide an alibi since he stated that he had been running from 7:00 until 8:00, studied alone from 8:00 to 9:45 and started running again for the second time in one evening around 10:00. He claimed that the scratches were from falling while running.

APPENDIX III
AGENDA MOOT COURT NUMBER ONE

I. OPENING OF TRIAL

A. Bailiff Announces Judge's Arrival
B. Judge Gives Instructions to the Jury
C. Opening Statement by Attorneys
    1. Prosecution
    2. Defense

II. EXAMINATION OF WITNESSES

A. Prosecution
    1. Susan Lee
    2. Reginald Lewis Farnsworth III
    3. Captain Agatha Anderson

Note: The Defense will cross-exam each witness

B. Defense
    1. Gloria Vanderfeller
    2. Niles Maize

Note: The Prosecution will cross-exam each witness

III. CLOSING PORTION OF THE TRIAL

A. Prosecution provides initial closing remarks
B. Defense provides closing remarks
C. Prosecution closes
D. Judge gives final instructions to jury
E. Jury is sequestered
F. Verdict is announced

IV. POST TRIAL--ADVISORS WILL CRITIQUE THE MOOT COURT

TIME LIMITS WILL BE IMPOSED AS FOLLOWS
Opening Remarks--8 minutes each
Cross-Examination--10 minutes total
Examination of Opposing Witnesses--5 minutes
Closing Remarks--7 minutes

Note: A total of thirty minutes is available to each side. They may divide it up as they wish. . .however, the guidelines provided above may be used as a maximum. If one side only uses 6 minutes for their opening remarks, they will get 2 minutes added to their next area to provide for flexibility.

APPENDIX IV
MOOT COURT NUMBER TWO
AGENDA

I. OPENING OF TRIAL

A. Judge's Arrival--Bailiff, Jeff Evans
B. Instructions to Jury--Judge, Robert Clamme

II. OPENING STATEMENTS (8 Minutes)

A. Prosecution Attorney--Brad Baugh
B. Defense Attorney--Kelly Dunn

III. EXAMINATION OF WITNESSES

A. Prosecution (10 minutes)
   1. Tennis Court Witness--Beth Clary
   2. Officer Darrow--Doug Trenfield
   3. Victim--Jenny Oaks

B. Defense Cross-Examination (5 minutes)

C. Defense (10 minutes)
   1. Defendant--John Shafer
   2. Track Coach--Randy Richardson

D. Prosecution Cross-Examination (5 minutes)

IV. CLOSING REMARKS (7 minutes)

A. Prosecution Attorney--Donnajean Reckelhoff
B. Defense Attorney--Neal Fraser

V. CLOSING OF TRIAL

A. Judge's Final Instructions to the Jury
B. Sequestering of the Jury
C. Announcement of the Verdict

VI. CRITIQUE OF THE MOOT COURT BY THE LAWYER-ADVISORS

Note about the time limits: A total of thirty minutes is available to each side. They may divide it up as they wish using the guidelines provided above as a maximum. If one side uses only six minutes for their opening remarks, they will get two minutes added to their next area to provide for flexibility.